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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,150	09/02/2005	Anthony J. Carey	CUL-0013	8804

23413 7590 03/08/2007  
CANTOR COLBURN, LLP  
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BLOOMFIELD, CT 06002

EXAMINER
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KEEFE, STEPHEN L

ART UNIT	PAPER NUMBER
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3671

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/08/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No. 10/523,150	Applicant(s) CAREY, ANTHONY J.	
	Examiner Stephen L. Keefe	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/24/2005</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fitch (US 3,643,924) in view of Wasserstrom (US 5,988,934).

Regarding claims 1, 2, 8, and 12, Fitch discloses a traffic barrier system comprising at least one crash rail (40,42) extending lengthwise along at least one side of the elongate barriers (20) wherein the at least one crash rail (40,42) is secured to selected elongate barrier modules by a deformable member (62) said deformable member (62) being disposed between the at least one crash rail (40,42) and the selected elongate barriers (20); Fitch further discloses that the elongate barriers (20, enclosed between 28 and 30) may be filled with a "dispersible mass such as sand" (ie ballast). See column 3, lines 17-24, 48-50 and column 4, lines 1-3, 8-10 and Figure 3.

What Fitch does not disclose is the use of fluid ballast.

However, Wasserstrom teaches it is well known to provide a relocatable modular traffic barrier system with a cavity for receiving a fluid ballast material such as water to increase the stiffness of a barrier with a readily available material (column 3, lines 52-

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54). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the traffic barrier disclosed by Fitch to have water-filled barriers, as taught by Wasserstrom, to provide a barrier with enough stiffness to "prevent a vehicle from penetrating into a desired area." (column 1, lines 6-8).

Regarding claims 3 and 4, Fitch discloses a traffic barrier system wherein the crash rail (40,42) is formed from a plurality of sections (40,42,44) and extends over and is mounted upon barriers (20), the crash rail (40,42) being a steel beam with a W-shaped configuration (column 3, lines 48-56 and Figure 3).

Regarding claims 5-7 and 9-11, Fitch discloses a traffic barrier system wherein the deformable member (62) includes a deformable element design (the Z-shape) to absorb or accommodate the majority of the deformation of the member; the deformable element may include a C-section of metal disposed vertically on a first portion in the shape of a bracket (connection on the right side of Figure 3). Although Fitch does not disclose orientating the open side of the C-section facing away from the oncoming traffic, to do so is well within the routine skill of one practicing in the art (column 4, lines 8-10 and Figure 3).

***Conclusion***

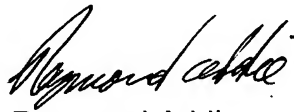
2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Giavotto (US 5,876,020), Chiodo (US 4,869,617), Duckett (US 6,413,009), McCallum (US 6,164,865), Christensen (US 6,086,285), Striefel et al. (US 6,059,491), Christensen (US 5,452,963), Yodock et al. (US 5,882,140), and Cicinnati et al. (US 5,286,137) provide additional concepts for vehicle barriers.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Keefe whose telephone number is 571-272-5652. The examiner can normally be reached on 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Raymond Addie  
Primary Examiner  
Group 3600

SLK  
2/28/07